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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LEZAK, ARRIENNE M

ART UNIT PAPER NUMBER

2143

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/928,433

Applicant(s)

MENDIOLA ET AL.

Examiner

Arrienne M. Lezak

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 17-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 17-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/9/01</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 5-15 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependant claim. See MPEP § 608.01(n). Accordingly, the claims 5-15 have not been further treated on the merits.
2. Claim 3 is objected to because of the following informalities: Examiner notes that Claim 3, as written, contains a typographical error. Specifically, Examiner believes the phrase "said buffer server being optimally connected relative to both said IM server and said remote server so as to maximize message throughput" to be the final phrase in claim 2, rather than the first phrase in Claim 3. Appropriate correction is required. For examination purposes, said phrase will be considered part of Claim 2.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.
4. Claims 4 & 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, Examiner finds the wording "in close proximity" to be indefinite and requires removal of the same. For examination purposes,

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the claim language "is located in close proximity to the remote server" will not be considered.

5. Claims 16 & 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim requiring correction. For examination purposes, these claims will not be considered.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 & 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent US 6,938,069 B1 to Narayanaswamy in view of Applicant Admitted Prior Art, (hereinafter, "AAPA").

8. Regarding Claims 1, 2 & 17, Narayanaswamy discloses an instant messaging system and method comprising:

- an IM server having a plurality of clients with IM client applications of the same or different types, (Col. 4, lines 22-40 & Col. 5, lines 54-63),  
(Examiner further notes that Narayanaswamy teaches a dialog buffer associated with a server-based meeting space, which dialog buffer is capable of storing messages, obviously upon a server, and wherein it

would have been obvious to maintain instant messages on a separate IM server for purposes maximizing memory allocation as needed throughout the network.);

- a remote server to which at least one of said clients is connected, (Col. 4, lines 22-40 & Col. 5, lines 54-63);
- a computer network interconnecting said IM server and said remote server to provide IM communications there between, (Col. 4, lines 22-40 & Col. 5, lines 54-63);
- a buffer (dialog) server interconnected with said remote server, the interconnection providing for the communication of messages between said buffer server and said remote server in steady, timed flows with minimal latency and connection disruptions, (Col. 4, lines 22-40 & Col. 5, lines 54-63);
- said buffer (dialog) server also being interconnected with the IM server using a protocol compatible therewith in a manner where message handshaking is not required to be performed sequentially to accommodate higher latency and instability of the computer network there between, (Col. 4, lines 22-40 & Col. 5, lines 54-63); and
- said buffer server being optimally connected relative to both said IM server and said remote server so as to maximize message throughput, (Col. 4, lines 22-40 & Col. 5, lines 54-63).

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9. Though Narayanaswamy teaches a dialog buffer associated with a server-based meeting space, Narayanaswamy does not specifically enumerate wherein that portion of the computer network interfaced with the IM server is prone to latency and instability, and wherein said remote server utilizes a sequential message handshaking protocol for transmitting and receiving messages to and from the IM server, and whereby a confirmation of the successful transmission or receipt of a message is required to be received or sent by said remote server before a subsequent message is able to be transmitted or received, and wherein a sequential message handshaking protocol is also utilized between said buffer server and said remote server.

10. Applicant however, discloses wherein that portion of the computer network interfaced with the IM server is prone to latency and instability. (AAPA – Specification p.4, lines 28-30), and wherein said remote server utilizes a sequential message handshaking protocol for transmitting and receiving messages to and from the IM server, whereby a confirmation of the successful transmission or receipt of a message is required to be received or sent by said remote server before a subsequent message is able to be transmitted or received, (AAPA – Specification p.3, lines 6-33), and whereby using a sequential message handshaking protocol corresponding to that used by said remote server between said buffer server and said remote server would have been obvious in light of the protocol applied between the remote server and the IM server. The motivation to combine the AAPA into the Narayanaswamy system is to provide for the generation and transmission of various classes of messages, (Narayanasway – Col. 1, lines 61-64), wherein the incorporation of particular protocols

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and message confirmations would facilitate the same. Additionally, Examiner notes that AAPA is obviously well known in the art and thus applicable to the Narayanaswamy teachings as noted herein. Thus, Claims 1, 2 & 17 are found to be unpatentable over the combined teachings of Narayanaswamy in view of AAPA.

11. Regarding Claims 3 & 18, the combined teachings of Narayanaswamy and AAPA are relied upon for those teachings noted herein. AAPA additionally teaches the use of a direct link between servers, (AAPA – Specification p.4), wherein it would have been obvious for the buffer server to be connected via a direct electronic link to the remote server so as to ensure the communication of messages between the buffer server and the remote server in steady, timed flows with minimal latency and connection disruptions. Thus, Claims 3 & 18 are found to be unpatentable over the combined teachings of Narayanaswamy in view of AAPA.

12. Regarding Claims 4 & 19, the combined teachings of Narayanaswamy and AAPA are relied upon for those teachings noted herein. Narayanaswamy further teaches wherein if the remote network is located in a highly reliable Internet exchange with a highly reliable Internet infrastructure, the buffer server is connected via the highly reliable Internet exchange and infrastructure to the remote server, (Col. 2, lines 10-30 & Col. 4, lines 57-62), (Examiner notes that Narayanaswamy clearly teaches a virtual server-based meeting with Internet capabilities, wherein location of all meeting based entities would obviously be on the Internet network or connected thereto). Thus, Claims 4 & 19 are found to be unpatentable over the combined teachings of Narayanaswamy in view of AAPA.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
Examiner  
Art Unit 2143

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